

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Rural Broadband Experiments)	WC Docket No. 14-259
)	

COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL

The Utilities Technology Council (“UTC”)¹ hereby files the following comments in support of Lake Region Electric Cooperative’s Application for Review of the Wireline Competition Bureau’s Order and Order on Reconsideration.² UTC agrees with Lake Region that the Bureau’s Order is contrary to Commission policy and procedure and should be reversed by the Commission. The Bureau’s Order would prevent access to Rural Broadband Experiment (RBE) funding that is desperately needed to deploy broadband in areas that are currently unserved, including many Tribal areas. Moreover, the Bureau’s Order conflicts with the Commission’s decision to recognize the Cooperative Finance Corporation (CFC) as a qualified bank under the Connect America Fund. As such, the Bureau’s decision is contrary to law and policy, as well as arbitrary and capricious, and the Commission should reverse it.

UTC is the international trade association for the telecom and IT interests of electric, gas and water utilities and other critical infrastructure industries. There are an increasing number of

¹ UTC was formerly the “Utilities Telecom Council”. See www.utc.org.

² See Application for Review of Order and Order on Reconsideration by Lake Region Electric Cooperative, WC Docket No. 10-90 and WC Docket No. 14-259 (filed Sept. 13, 2016) (hereinafter “Application for Review”). See also *Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90 and 14-259, Order and Order on Reconsideration, DA 16-926 (Wireline Comp. Bur., Aug 15, 2016) (*Bureau Order*).

utilities like Lake Region who are deploying broadband and offering broadband services, particularly in unserved and underserved areas. These utilities are offering robust, reliable and affordable broadband services in areas that are truly rural and previously lacked access to even 4/1 mbps speeds. UTC formed its Rural Broadband Council in 2012 to support utilities that are already deploying broadband or that are interested in deploying broadband in rural areas in the future. As such, UTC has been an active participant in various Commission proceedings related to broadband access, and is pleased to provide these comments in support of Lake Region's Application for Review.

I. The Bureau's Order is Contrary to Commission Policy

As Lake Region explains in its Application for Review, the Bureau's Order directly conflicts with the Commission's policy because it acts as a barrier to broadband deployment in Tribal areas.³ The Commission has recognized that broadband access in Tribal areas is low. According to FCC Form 477 data (as of December 31, 2014), approximately 41 percent of Americans living on Tribal lands lack access to 25 Mbps/3Mbps as compared to 10 percent of the U.S. population as a whole.⁴ Chairman Wheeler has stated that, "expanding high speed broadband connections to all corners of the country is a top priority for the Commission," adding that "[n]owhere could meeting this objective be more impactful than on Tribal lands."⁵ UTC

³ Application for Review at 8-9.

⁴ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended*, GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699, 732-33, paras. 79-80 and Table 2 (2016)

⁵ Letter to The Honorable Maria Cantwell, United States Senate from Thomas Wheeler, Chairman, FCC (Jan. 23, 2015), visited at https://apps.fcc.gov/edocs_public/attachmatch/DOC-332049A1.pdf.

notes that all of the census blocks in Lake Region’s RBE selected projects are designated as Tribal.⁶ Accordingly, UTC submits that Commission grant of Lake Region’s Application for Review would serve the public interest because it would direct 100 percent of the funding to Tribal areas, thereby promoting broadband access and closing the digital divide in those areas.

There are no countervailing public interest benefits underlying the Bureau’s Order. As Lake Region explained, the purpose of the letter of credit requirement was to ensure the integrity of the Universal Service Fund. Lake Region has effectively satisfied that requirement by obtaining a letter of credit from CFC, which the Commission has been determined to be a qualified bank for purposes of RBE.⁷ While the Bureau asserts that granting Lake Region a waiver of LOC requirement would be unfair to other RBE auction participants, UTC submits that the Commission need not dogmatically apply the requirements in such a way that would frustrate the overriding goals of the RBE program, especially here where the Commission itself has determined that CFC is a qualified bank for purposes of meeting the LOC requirement. UTC also notes that the Commission dismissed as moot various other waiver requests, when it decided that CFC is a qualified bank.⁸ As such, the Commission should reverse the Bureau’s decision,

⁶ See Application for Review at 3.

⁷ See *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-50, and 14-259, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64, at paras. 126-130 (rel. May 25, 2016)(*Phase II Competitive Order*)(stating “we will also permit entities to obtain letters of credit from CoBank or the National Rural Utilities Cooperative Finance Corporation (CFC) as long as these two entities retain assets that place them among the top 100 U.S. banks, and they maintain a credit rating of BBB- or better from Standard & Poor’s (or the equivalent from a nationally-recognized credit rating agency)”).

⁸ See *Id.* at para 128, n. 262 (stating, “[g]iven our decision to adopt a rule permitting all recipients of support authorized through competitive bidding to serve fixed locations to obtain letters of credit from CFC, we dismiss petitions from CFC and from RBE recipients seeking waiver of the RBE rules to obtain a letter of credit from CFC as moot.”), *citing* National Rural

because there are no countervailing benefits by the strict application of the LOC requirements under the circumstances.

II. The Bureau's Order is Contrary to the Commission's Rules

Not only is the Bureau's Order contrary to policy, it is also contrary to the Commission's rules, because the Commission has recognized that CFC is a qualified bank, such that Lake Region's LOC from CFC satisfies the FCC's RBE requirements.⁹ The Bureau's decision to deny Lake Region's application based upon its LOC directly contradicts the Commission's rules that now allow applicants to submit LOCs from CFC. As Lake Region explains, Commission precedent requires that the Bureau apply the rules that are currently in effect, and those rules permit Lake Region and other applicants to submit LOCs from CFC.¹⁰ Therefore, the Bureau should not have denied Lake Region's application based upon its LOC. Accordingly, the Commission should reverse the Bureau's Order on this basis, as well.

Utilities Cooperative Finance Corporation and Rural Telephone Finance Cooperative Petition for Waiver, WC Docket Nos. 10-90, 14-58 at 6 (filed Jan. 21, 2015) (CFC and RTFC Jan. 2015 Petition); Allamakee-Clayton Electric Cooperative, Inc. Petition for Waiver, WC Docket Nos. 10-90, 14-58 (filed Jan. 30, 2015) (Allamakee Petition); Midwest Energy Cooperative, Inc. Petition for Waiver, WC Docket Nos. 10-90, 14-58 (filed Mar. 20, 2015) (Midwest Petition).

⁹ *Id.* at paras. 126-130.

¹⁰ Application for Review at 5-7.

CONCLUSION

WHEREFORE, UTC respectfully requests that the Commission reverse the Bureau's Order and award Lake Region RBE funding in the 68 census blocks where it was provisionally selected as the winning bidder. The public interest would thereby be served, because it would promote the Commission's overarching goals of broadband access in Tribal areas, and it would protect the integrity of the Universal Service Fund because CFC is a qualified bank.

Respectfully submitted,

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